

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8095 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 : NO

BABUJI J. THAKORE

Versus

STATE OF GUJARAT

Appearance:

Mrs. Suman Pahwa for M/S THAKKAR ASSOC. for Petitioner
Mrs. Hasaben Punani AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive

detention dated 10th September, 1998 made by the Commissioner of Police, Ahmedabad City under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The order of detention is based on the prohibition case registered against the petitioner and four others, and certain statements given by the witnesses whose identity has been withheld.

4. Learned advocate Miss. Suman Pahwa appearing for the petitioner has submitted that the aforesaid offence was registered against five persons, including the present petitioner. However, the orders of detention were made against four of them alone and no order of detention has been made against the co-accused Vinod Parshottam Chamar. The detention order made against the three others namely; Ramesh Thakore, Jayanti Chamar and Vinod Chamar have been revoked by the State Government under the orders dated 13th October, 1998. In the circumstances, the petitioner's detention made under the same set of facts also requires to be revoked. The contention is opposed by the learned AGP Mrs. Punani. She has submitted that the bootlegging activities were carried on essentially by the present petitioner and the three others were his employees. The detention orders against the said three detainees were, therefore, revoked on 13th October, 1998. However, petitioner's case is distinguishable and the order of detention cannot be tested on the same grounds.

5. I am afraid, I cannot accept the contention raised by Mrs. Punani. Except the bare statements given by the three detainees there is no evidence to support the contention that the bootlegging business in question belong to the present petitioner. Even otherwise, the said three persons were petitioner's accomplices in the offence and are equally punishable if the offence is proved. In my opinion, on the same set of facts, the petitioner cannot be singled out when the detention orders made against the other co-accused have been revoked.

6. Petition is, therefore, allowed. The impugned order dated 10th September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless he is required to be detained in some other case, be set free forthwith.

Prakash*